

Senate v. Carlson, C3-91-7547 (Aug. 2, 1991)

STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

The Seventy-seventh Minnesota State Senate and
Seventy-seventh Minnesota State House of Representatives,

Court File No. C3-91-7547

Plaintiffs,

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER for JUDGMENT and
MEMORANDUM of LAW**

Arne H. Carlson, Governor of Minnesota, and
Joan Anderson Growe, Secretary of State of Minnesota,

Defendants.

The above-entitled matter came duly on before the undersigned, a Judge of District Court on the 29th day of July, 1991 for trial.

Plaintiffs were represented by Theodore Collins and Bonnie Bennett of Collins, Buckley, Sauntry and Haugh, and Joel Michael, House Research, and Peter Wattson, Senate Counsel. Defendant Arne H. Carlson was represented by Bruce Willis and Kathleen Bloomquist of Popham, Haik, Schnobrich & Kaufman. Defendant Joan Anderson Growe was represented by John Tunheim, Chief Deputy Attorney General and Kenneth E. Raschke, Jr., Assistant Attorney General.

Based upon all the files, records and proceedings herein but more specifically reviewing the Stipulation of Facts entered into by counsel, reviewing the deposition [2] testimony of witnesses, reviewing all the exhibits submitted, considering the Memorandum of Law submitted and hearing arguments of counsel, the Court makes the following:

FINDINGS OF FACT

The Court adopts as its Findings of Fact the following stipulated facts submitted by the parties hereto.

1. Chapter 145, H.F. No. 1405 was passed by the legislature on May 13, 1991. The enrolled bill was presented to the Governor on May 20, 1991. On Thursday, May 23, 1991, at 6:45 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Jefferson and Senator Spear, the authors of the bill, on May 23, 1991, to notify them of the Governor's action. She spoke personally to Representative Jefferson, informing him of the Governor's action. She left a message informing Senator Spear of the Governor's action. The enrolled bill, with the original of the Governor's objections (veto message), was delivered to the Chief Clerk of the House of Representatives on Friday, May 24, 1991.

2. Chapter 185, H.F. No. 425, was passed by the legislature on May 16, 1991. The enrolled bill was presented to the Governor on May 21, 1991. On Friday, May 24, 1991, at 6:35 p.m., on the signature page of the enrolled

copy of the bill, the Governor struck the word "approved," wrote in the [3] word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Begich and Senator Johnson, the authors of the bill, on May 24, 1991, to notify them of the Governor's action. She left a message informing Senator Johnson of the Governor's action. She currently does not recall speaking to Representative Begich, but she believes she either spoke to him or left a message with his office, informing him of the Governor's action. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Tuesday, May 28, 1991.

3. Chapter 239, H.F. No. 304, was passed by the legislature on May 18, 1991. The enrolled bill was presented to the Governor on May 28, 1991. On Friday, May 31, 1991, at 5:10 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Irv Anderson and Senator Chmielewski, the authors of the bill, on May 31, 1991, to notify them of the Governor's action. She left a message for each of them, informing them of the Governor's action. Copies of the Governor's objections to the bill were delivered to the capitol press room and were distributed to the capitol press corps on May 31, 1991, and the bill was the subject of a press conference by the Governor and subsequent television news coverage on May 31, 1991. Miriam Bergmark, a [4] representative of the Governor, says that she delivered copies of the Governor's objections to the bill to the closed offices of Representative Anderson and Senator Chmielewski on May 31, 1991. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Monday, June 3, 1991.

4. Chapter 246, S.F. No. 1571, was passed by the legislature on May 18, 1991. The enrolled bill was presented to the Governor on May 24, 1991. On Tuesday, May 28, 1991, at 9:02 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Rodosovich and Senator Pogemiller, the authors of the bill, on May 28, 1991, to notify them of the Governor's action. She left a message for each of them, informing them of the Governor's action. Copies of the Governor's objections to the bill were delivered to the capitol press room and were distributed to the capitol press corps on May 28, 1991, and the Governor's objections to the bill were given subsequent news coverage on May 28, 1991. The enrolled bill, with the original of the Governor's objections, was delivered to the Secretary of the Senate on Wednesday, May 29, 1991.

5. Chapter 255, S.F. No. 300, was passed by the legislature on May 18, 1991. The enrolled bill was presented to the Governor on May 28, 1991. On Friday, May 31, 1991 [5] at 4:33 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Pugh and Senator Flynn, the authors of the bill, on May 31, 1991 to notify them of the Governor's action. She spoke personally to Senator Flynn, informing her of the Governor's action. She left a message for Representative Pugh, informing him of the Governor's action. Miriam Bergmark, a representative of the Governor, says that she delivered copies of the Governor's objections to the bill to the closed offices of Senator Flynn and Representative Pugh on May 31, 1991. The enrolled bill, with the original of the Governor's objections, was delivered to the Secretary of the Senate on Monday, June 3, 1991.

6. Chapter 261, H.F. No. 1042, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 29, 1991. On Saturday, June 1, 1991, at 5:22 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Winter and Senator Dennis Fredrickson, the authors of the bill, on June 1, 1991, to notify them of the Governor's action. She spoke personally to both Representative Winter and Senator Fredrickson, informing them of the Governor's action. The enrolled bill, with the [6] original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Monday, June 3, 1991.

7. Chapter 262, H.F. No. 1050, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 29, 1991. On Saturday, June 1, 1991, at 4:12 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature.

Patsy Randell, a representative of the Governor, says that she telephoned both Representative Orfield and Senator Marty, the authors of the bill, on June 1, 1991, to notify them of the Governor's action. She spoke personally with Senator Marty, informing him of the Governor's action. She left a message informing Representative Orfield of the Governor's action. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Monday, June 3, 1991.

8. Chapter 284, S.F. No. 1152, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 29, 1991. On Saturday, June 1, 1991, at 5:17 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a representative of the Governor, says that she telephoned both Representative Kalis and Senator DeCramer, the authors of the bill, on June 1, 1991, to notify them of the [7] Governor's action. She left a message for each of them informing them of the Governor's action. Cynthia Jepsen, a representative of the Governor, says that she also telephoned Representative Kalis on June 1, 1991, and left a message informing Representative Kalis of the Governor's action. The enrolled bill, with the original of the Governor's objections, was delivered to the Secretary of the Senate on Monday, June 3, 1991.

9. Chapter 289, H.F. No. 871, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 29, 1991. On Saturday, June 1, 1991, at 4:09 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Lyall Schwarzkopf, a representative of the Governor, believes he telephoned Senator Waldorf, an author of the bill, on June 1, 1991, to inform him of the Governor's action. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Monday, June 3, 1991.

10. Chapter 303, S.F. No. 931, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 30, 1991. On Monday, June 3, 1991, at 4:45 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell and Cynthia Jepsen, representatives of the Governor, say that [8] they both telephoned Representative Orfield and Senator Mondale, the authors of the bill, on June 3, 1991, to notify them of the Governor's action. Patsy Randell spoke personally with both Representative Orfield and Senator Mondale, informing them of the Governor's action. Cynthia Jepsen left messages for both authors, informing them of the Governor's action. The enrolled bill, with the original of the Governor's objections, was delivered to the Secretary of the Senate on Tuesday, June 4, 1991.

11. Chapter 307, S.F. No. 505, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 30, 1991. On Monday, June 3, 1991 at 4:32 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Lyall Schwarzkopf, a representative of the Governor, says that he repeatedly telephoned Senator Laidig, an author of the bill, on June 2, 1991, to inform him of the Governor's intent to veto the bill, but he received no answer. The enrolled bill, with the original of the Governor's objections, was delivered to the Secretary of the Senate on Tuesday, June 4, 1991.

12. Chapter 320, H.F. No. 137, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 30, 1991. On Monday, June 3, 1991, at 4:47 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell, a [9] representative of the Governor, says that she telephoned both Representative Scheid and Senator Luther, the authors of the bill, on June 3, 1991, to notify them of the Governor's action. She left a message for each of them, informing them of the Governor's action. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Tuesday, June 4, 1991.

13. Chapter 348, H.F. No. 222, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 31, 1991. On Tuesday, June 4, at 9:28 p.m., on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. Patsy Randell and Peder Larson, representatives of the Governor, say that they telephoned both authors on June

4, 1991, to notify them of the Governor's action. Patsy Randell and Peder Larson each left a message informing Senator Dahl of the Governor's action. Although both Patsy Randell and Peder Larson say that they telephoned Representative Krueger repeatedly, neither was able to reach him. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Wednesday, June 5, 1991.

14. Chapter 349, H.F. No. 635, was passed by the legislature on May 20, 1991. The enrolled bill was presented to the Governor on May 31, 1991. On Tuesday, June 4, 1991, [10] at 9:30 p.m. on the signature page of the enrolled copy of the bill, the Governor struck the word "approved," wrote in the word "vetoed," and affixed his signature. The enrolled bill, with the original of the Governor's objections, was delivered to the Chief Clerk of the House of Representatives on Wednesday, June 5, 1991.

15. In approximately late March, 1991, Tom Gilbertson of the Governor's staff obtained copies of the signature pages of enrolled bills that had been vetoed by Governor Perpich, on which Governor Perpich had stricken the word "approved," had written in the word "vetoed," had affixed his signature, and had noted the date and time of day of his action.

16. Joan Anderson Growe, as the duly elected Secretary of State of Minnesota, is charged pursuant to Minn. Const. art. IV Sec. 23, and Minn. Stat. Sec. 4.034 (1990), with various ministerial duties in the receipt, filing, and preservation of approved bills, veto messages, and other documents pertaining to the enactment and approval or veto of legislative bills.

17. Pursuant to those duties, Secretary of State Growe received for filing in her office, and has filed, the following:

(a) Veto messages executed by the Governor directed to the above-referenced bills;

(b) The enrolled copies of the above-referenced bills together with letters of transmittal from the [11] Secretary of the Senate, as to Senate files, and the Chief Clerk of the House of Representatives, as to House files, which state that the transmitted Senate and House files respectively were returned by the Governor after the three-day period permitted for veto. The enrolled copies of the bills were received by Secretary Growe on June 7, 1991, and filed by her on June 10, 1991; and

(c) A letter from Lyall A. Schwarzkopf, Chief of Staff to the Governor, asserting that the Governor had fully complied with constitutional requirements in vetoing the bills.

18. Secretary of State Growe has herself taken no action either to cause such bills to become law or to prevent them from becoming law.

19. The bills at issue have also been forwarded to Steven C. Cross, the Minnesota Revisor of Statutes, who intends to publish the bills with a notation that there is litigation pending concerning the validity of the Governor's vetoes of the bills. Before any such publication occurs, the parties to this action will be advised of the form of the proposed publication.

20. At its 1989 session, the legislature passed 356 bills. Of that number, 103 (approximately 29%) were presented to the Governor after adjournment of the session, as follows:[12]

<u>Date</u>	<u>Number Presented</u>
May 23	27
May 26	26
May 30	47

May 31

3

103

21. At its 1990 session, the legislature passed 256 bills. Of that number, 72 (approximately 28%) were presented to the Governor after adjournment, as follows:

<u>Date</u>	<u>Number Presented</u>
April 26	35
April 28	<u>37</u>
	72

22. At its 1991 session, the legislature passed 356 bills. Of that number, 192 (approximately 54%) were presented to the Governor after adjournment, as follows:

<u>Date</u>	<u>Number Presented</u>
May 21	20
May 23	28
May 24	34
May 28	13
May 29	32
May 30	32
May 31	32
June 3	<u>1</u>
	192

[13] 23. In January, 1991, the legislature adopted as the temporary joint rules of the 77th session, the joint rules of the Senate and the House of Representatives for the 76th session. The legislature has not yet adopted permanent joint rules for the 77th session.

24. As required by procedures established by the Minnesota Revisor of Statutes, by a letter to the Revisor dated January 14, 1991, the Governor designated two members of his staff, Patsy Randell and Denise Stephens, as his authorized agents for the receipt from the Revisor of Statutes of enrolled bills passed during the 1991 legislative session.

25. For bills passed during the 1991 legislative session, personnel of the office of the Speaker of the House told personnel of the Governor's office that the Governor's objections and vetoed bills that originated in the House of Representatives should be delivered to the Chief Clerk of the House of Representatives, and the Secretary of the Senate was authorized to receive the Governor's objections and vetoed bills that originated in the Senate.

26. During the 1991 session, if the House of Representatives was in floor session during the evening, the Chief Clerk of the House of Representatives was normally present in the House Chambers, and on one or more occasions during the 1991 session, a representative of the Governor's office delivered the enrolled copy of a vetoed bill and the original of the Governor's objections of the bill to the [14] Chief Clerk of the House of Representatives in the House Chambers during evening hours.

27. At all times relevant to the bills at issue, the published business hours of the Office of the Chief Clerk of the House of Representatives were 8:00 a.m. to 5:00 p.m. on weekdays only. The office was closed on Saturdays, Sundays and Memorial Day, May 27, 1991.

28. From May 21, 1991 through May 31, 1991, the published business hours of the office of the Secretary of the Senate were 8:00 a.m. to 4:30 p.m. on weekdays only. The office was closed on Saturdays, Sundays, and Memorial Day, May 27, 1991. From June 3, 1991 to the present, the published business hours of the Office of the Secretary of the Senate have been from 7:30 a.m. to 5:30 p.m. on weekdays only.

In addition to the above-stated Stipulated Facts, the Court hereby further finds:

29. The Minnesota Constitution Article IV, Sec. 23 specifically sets forth the requirements to effectuate a veto:

Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal.

* * *

Any bill not returned by the governor within three days (Sundays excepted) after it is [15] presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return.

30. Pursuant to the above-referenced provision of the Minnesota Constitution, the Governor's writing "vetoed" on the enrolled bill, in and of itself, is not legally sufficient to constitute a veto.

31. Pursuant to the above-referenced provision of the Minnesota Constitution, the Governor must provide his objections with the bill and physically return it to its House of origin within three days of presentment.

32. Pursuant to the above-referenced provision of the Minnesota Constitution, any attempts which were made by the Governor to provide "constructive notice" through telephone calls, press conferences or other messages are not legally sufficient.

33. As set forth in paragraphs 1-14, the Governor did not return the 14 bills with his objections to the House of origin within three days of presentment.

34. In the past, the administrations of Governor Perpich and Governor Quie had made special arrangements to deliver vetoed bills after the Chief Clerk and Secretary of the Senate's offices were closed. Governor Quie's staff interrupted a senator at a social function at 11:00 p.m. for the specific purpose of delivering a vetoed bill before the three-day time period had expired. (Doyle depo. pp. 15-16). In preparation for an anticipated veto by Governor Perpich, [16] his staff reviewed the constitution and sought advice from the Attorney General's office. A state patrol officer then delivered a copy of the bill to the Chief Clerk's home. Perpich's staff contacted a security guard, who opened the House chamber, and the enrolled bill was placed on the Speaker's desk in the House chamber. (Anderson depo. pp. 18-20).

35. Governor Carlson's staff was aware that enrolled bills with the Governor's objections had to be returned to the House of origin within three days of presentment. The Revisor of Statutes, Steven Cross, met with several persons of the Governor's staff in early 1991. During this meeting, Cross informed them that the enrolled copy of the bill should be hand-delivered to the body where it was intended to go after the Governor took action on it. Cross also told them this must be done within three days after presentment. (Stephens depo. p. 19-20). In a later conversation initiated by Stephens, Cross also informed the Governor's staff that when they had to return an enrolled bill after normal office hours, they should make arrangements with the appropriate body to keep their

offices open. (Stephens depo. p. 37; Cross depo. pp. 17-18). The Governor, however, failed to designate individuals to oversee this process. (Stephens depo. pp. 45-46).

36. The Chief Clerk and the Secretary of the Senate were not the only persons to whom the Governor could have returned the 14 bills at issue. The Governor could have [17] returned the 14 bills to any legislator, including members of his own caucus, to effectuate the attempted vetoes. *State ex.rel. Putnam V. Holm*, 172 Minn. 162, 215 N.W. 200 (1927).

37. Between 4:00 and 4:30 p.m. Friday, May 24, 1991, Lynn Andrews contacted the Chief Clerk of the House of Representatives, Edward Burdick. Andrews, a temporary secretary to Denise Stephens in the Governor's Legislative Relations Department, was requested by Stephens to contact Burdick. (Andrews depo. pp. 10, 16-18). Stephens told her to ask Burdick when the staff could return vetoes. Andrews asked Burdick if his office would be open over the Memorial Day weekend so that the Governor's staff could return some "stuff". (Andrews depo. p. 21). She did not use the word "veto" because she believed Stephens wanted the vetoes to be kept a secret. (Andrews depo. p. 18, 21). Burdick questioned why and asked if she would be returning vetoes. She did not answer but asked if she was, when could she return them. (Burdick depo. p. 25-26). Burdick advised her to seek an opinion from the Attorney General's office (Burdick depo. p. 26; Wahmann depo. p. 14).

38. Neither the Governor nor any senior staff appeared in this case to explain what they did to learn from the Attorney General or elsewhere the proper procedure to execute a legal veto. No one from the Governor's staff requested Burdick to keep his offices open over the Memorial Day weekend. (Andrews depo. p. 23, 24). Nor did Burdick refuse to keep open the Clerk's office for purposes of [18] thwarting Governor Carlson's veto attempts.

39. No evidence exists that the presiding officer, secretary or members of either House made themselves unavailable to receive vetoed bills from the Governor outside of normal business hours.

40. The 1991 legislative session was/is an odd-numbered year in the legislative biennium.

41. Art. IV. Sec. 7 of the Minnesota Constitution authorizes each house to determine the rules of its proceedings and to sit upon its own adjournment. The Minnesota Legislature adjourned for 1991 after close of its business on May 20, 1991. The May 20, 1991 entries of the Journals of the House and Senate show that both bodies adjourned on May 20, 1991. (Burdick depo. p. 19). No bills were passed on Tuesday, May 21, 1991.

42. Senate Rule 1 and House Rule 9.5 bring into effect Mason's *Manual of Legislative Procedure*. The rules contained in Mason's govern the houses in all cases in which they are applicable and in which they are not inconsistent with the rules and the orders of the Senate and joint rules and orders of the two houses. (Flahaven depo. p. 22; Burdick depo. pp. 6-7). Pursuant to Mason's Sec. 204, legislative bodies have the right to adjourn whenever they determine to do so. By virtue of paragraph three of the same section, neither the Senate nor the House can constitutionally adjourn *sine die* without the consent of the other. Reconvening and adjourning are internal housekeeping matters of the [19] legislature, and any interference with them by this Court is impermissible, pursuant to the Separation of Powers doctrine. See, Minnesota Constitution, Article III.

43. Approaching midnight on May 20, 1991, the House was debating the Revisor's bill. When members of the minority caucus brought the passing of midnight to Speaker Robert Vanasek's attention, he immediately closed debate on the bill. (Abrams depo. p. 37; Knickerbocker depo. pp. 24-26; Rodosovich depo. pp. 17-18). The 77th Minnesota Legislature then adopted a joint resolution to reconvene on January 6, 1992. No bills were passed after midnight. At no time did either House give its consent to the other to adjourn *sine die*.

44. The legislature has default rules which govern situations where there is no adjournment in an odd-numbered year. Mason's *Manual of Legislative Procedure* states that if either House adjourns without fixing the hour of reconvening, said Houses will re-convene on the next legislative day at the hour fixed in the rules. Mason's Rules further provides that when no set time is fixed for reconvening, the Houses re-convene on the next legislative day at the usual hour. Absent the joint resolution of adjournment and reconvening on January 6, 1991, under these rules the legislature could be deemed to have adjourned to the next meeting day, January 2, 1992. No adjournment *sine die* occurred. *State v. Hoppe*, 298 Minn. 386, 215 N.W.2d 797 (1974).

CONCLUSIONS OF LAW

1. The fourteen (14) bills which were not physically returned to the House of origin within three (3) days of presentment to the Governor are now law. *State ex.rel. Putnam v. Holm*, 172 Minn. 162, 215 N.W. 200 (1927).
2. That Article IV, Section 7 of the Minnesota Constitution gives the legislature authority to sit upon its own adjournment. The legislature's act of adjourning after midnight is a matter of internal housekeeping and does not mean that it adjourned *sine die*. Therefore, the 14-day "pocket veto" provision of Article IV, Section 23 does not invalidate these fourteen laws or the many other laws not signed within fourteen days of adjournment.
3. That the legislature did not adjourn *sine die* at midnight on May 20, 1991.
4. There is no basis for the Governor's estoppel defense under the facts of this case. No improper conduct by the legislature occurred evidencing any intention to thwart the Governor's attempts to veto these bills. The Governor has not demonstrated any false representations which were made to him or his staff by the legislature.

ORDER FOR JUDGMENT

1. That the 14 bills, as set forth in Findings of Fact 1 through 14 above, are hereby declared laws of the State of [21] Minnesota and have been laws of this state since the passing of midnight on the third day after presentment.
2. That the Governor and Secretary of State are hereby ordered to obey and enforce these laws of the State of Minnesota.
3. Let the attached Memorandum become a part of the foregoing order.

BY THE COURT:

Joanne M. Smith
Judge of District Court

Dated this 2nd day of August, 1991.

[22] MEMORANDUM

The issue presented to this Court is whether or not defendant Governor Carlson effectively vetoed the fourteen bills in question in accordance with Minnesota Constitution Article IV, section 23. This section provides in pertinent part:

Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal.

* * *

Any bill not returned by the governor within three days (Sunday excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the

governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

This section clearly sets forth the procedures that must be followed in order to effectuate a veto.

It is conceded by defendant Carlson that all fourteen vetoes at issue were returned after the three-day [23] deadline. However, it is the Governor's position that the vetoes of these bills were effectuated because he struck the word "approved" and wrote in the word "vetoed" within three days after presentment of the enrolled bills to him. The Governor further called or had his representatives call the authors of the bills or left messages for them informing them of his vetoes. In addition, copies of the Governor's veto messages were delivered to the news media and the Governor's vetoes were the subject of public news coverage. The Governor, in almost all of the bills at issue, delivered the enrolled bill to the office of the Chief Clerk of the House of Representatives or the office of the Secretary of the Senate, as appropriate, on the next business day after the Governor's action. The Governor argues that these actions indicate his intention to veto the bills at issue and that his actions complied with both the spirit and essential purpose of the veto procedure provided for by the Minnesota Constitution.

In order for this Court to accept the Governor's constructive veto argument, the Court would have to interpret the unambiguous and clear language of the Minnesota Constitution and ignore the holding in *State ex. rel. Putnam v. Holm*, 172 Minn. 162, 168, 215 N.W. 200, 203 (1927). In *Putnam*, a senate bill was presented to the Governor on Wednesday, April 13, 1927. April 15 was Good Friday and at that time was observed as a legal holiday. The Governor executed a veto message bearing the date of April 16 but [24] retained the bill and the veto message until it was delivered to the President of the Senate on Monday, April 18. The Minnesota Supreme Court determined that the plain language of the constitution required the bill to be physically returned within three calendar days after presentment to the Governor, excluding the Sunday but not the holiday.

The Court in *Putnam* carefully examined the Constitutional language and stated:

Unambiguous words need no interpretation. How can there be any doubt as to the meaning of such words; "three days (Sundays excepted)"? We are not empowered to say that these men meant something they did not say. Their failure to include "and holidays" cannot be construed to mean that they impliedly included them. We are not at liberty to give the language of the Constitution any meaning other than its natural and ordinary meaning, unless such construction would lead to an unjust or otherwise unreasonable result manifestly not intended. The Constitution is the mandate of the sovereign power and we must accept its clear language as it reads. *Cooke v. Iverson*, 108 Minn. 388, 397, 122 N.W. 251 (1909). It is our duty to construe the law. We cannot ingraft upon the Constitution things that might have been included. *Id.* at 215 N.W. 202.

Thus, it is clear from the language of the *Putnam* decision that there is no room for interpretation of the clear and unambiguous language of the Constitution. In the instant case, it is undisputed that the Governor did not physically return the bills within three days of presentment.

Further, the Governor seeks to extend the clear three-day limit by arguing that he manifested his intent to veto these bills within three days. Therefore, it does not [25] matter that they were not physically returned to the house of origin within three days following presentment. However, this argument would require this Court to lend an interpretation to the Constitution that goes well beyond its clear language. The Court obviously does not have the authority to amend the Minnesota Constitution.

In the case of *In re Interrogatories of the Governor Regarding Certain Bills of Fifty-First General Assembly*, 578 P.2d 200 (Colo. 1978), the Colorado Supreme Court addressed the issue of whether the Governor had effectively vetoed eight bills. In holding that he had not, the Court cited the case of *Capito v. Topping*, 65 W. Va. 587, 64 S.E. 845 (1909) which stated:

Constitutional provisions are organic. They are adopted with the highest degree of solemnity. They are intended to remain unalterable except by the great body of the people, and are incapable of alteration without great trouble and expense. They are the framework of the state as a civil institution, giving cast and color to all its legislation, jurisprudence, institutions and social and commercial life by confining the Legislature, the executive and judiciary within prescribed limits . . . We are aware of no decision authorizing the view that a constitutional clause dealing with matters so high and vital in character as the executive power of veto, and the making of laws, and having form and terms so emphatic, is merely directory. at 846, 847.

The Minnesota Constitution is the supreme document of this state. Its provisions were carefully and thoughtfully drawn more than 100 years ago. It was amended and restructured in 1974. In *Sjoberg v. Security Savings & [26] Loan Assoc.*, 73 Minn. 203, 75 N.W. 1116 (1898), the Minnesota Supreme Court stated:

Strict conformity with the Constitution ought to be an axiom in the science of government. We are not prepared to hold that every provision of the Constitution is mandatory, but we do hold that they should all be understood and accepted as mandatory unless a different intention is unmistakably manifest on the face of the provision. Rules which distinguish mandatory and directory statutes should rarely, if ever, be applied to constitutional provisions. Courts tread upon very dangerous ground when they attempt to do so. Unless a constitutional provision shows upon its face that it was intended to be directory, it must be accepted as the imperative mandate of the sovereign people, and not as good advice which legislators and courts may accept or reject as they please. The safety of the state, and the protection of the liberties and rights of the people, demand that this rule be strictly adhered to. *Id.* at 212.

It is this Court's belief that the Minnesota Supreme Court's reasoning is as compelling today as it was in 1898. Since the Governor did not comply with its provisions, the fourteen bills must become law.

Similarly, this Court must reject the Governor's arguments that the legislature thwarted the Governor's attempts at vetoing the bills. There is absolutely no evidence in the record to support this contention. It is clear under the *Putnam, supra*, decision that the Governor had numerous options available to him in physically returning the bills. Further, there is no evidence in the record which indicates that anyone in the legislature or their staff members acted improperly or misled the Governor's staff as to [27] the return of vetoed bills.

In fact, the evidence supports the conclusion that the Governor's staff was aware that the enrolled bills, if vetoed, had to be returned to the house of origin within three days of presentment. In early 1991, Steven Cross, the Revisor of Statutes, met with several persons from the Governor's staff and advised them of the proper procedures. Mr. Cross later had a conversation with the Governor's staff informing them that when they had to return an enrolled bill after normal office hours, they should try to make arrangements with the appropriate body. However, it is clear from the evidence that the Governor failed to designate an individual who was responsible for supervising this process. The constitutional mandates simply were not followed.

The Governor argues that former governors have not technically complied with the constitution in physically returning vetoed bills and therefore, past practice dictates that he should be allowed to follow those same procedures. However, the former governors' actions that are referenced were not put to the test of a constitutional challenge and therefore, this argument is irrelevant to the instant case. Past practice cannot modify a clear constitutional provision.

The Governor alternatively argues that the fourteen bills were "pocket vetoed" after fourteen days because the legislature allegedly failed on May 20, 1991 to adjourn to a date certain. This assertion is made despite the fact that the 1991 legislative session was an odd year in the biennial [28] cycle and, therefore, not subject to the Constitution's "pocket veto" provisions. In putting forth this argument, the Governor is asking this Court to overturn the Minnesota Supreme Court decision of *State v. Hoppe*, 298 Minn. 386, 215 N.W. 2d 797 (1974).

In *Hoppe*, the Minnesota Supreme Court carefully examined Minnesota's legislative biennial session and ruled that an adjournment in odd-number years is not a final adjournment or adjournment *sine die*. Consequently, the

court concluded that an adjournment in an odd-numbered year to a fixed date in the next even-numbered year is not an adjournment which ends the session for purposes of applying the fourteen-day pocket veto provisions of the Constitution. The *Hoppe* court went on to conclude that the constitutional language providing for bills to become law if not returned with objections within three days, is in effect following interim adjournment, that is adjournment in an odd year.

This Court does not believe that there is any basis for a reversal of the *Hoppe* decision. However, if the *Hoppe* case is to be overturned, it certainly is not the trial court's role to take that action.

The Governor's additional arguments as to the manner of adjournment by the legislature are without any merit and accordingly, must be rejected.

Based upon the foregoing, this Court finds that the fourteen bills at issue were not properly vetoed according to the mandates of the Minnesota Constitution and Minnesota case [29] law. Accordingly, these bills are hereby declared laws of the State of Minnesota.

JMS

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